1	NOTICE OF CLAIM OF GOVERNMENTAL
2	IMMUNITY
3	2003 GENERAL SESSION
4	STATE OF UTAH
5	Sponsor: David L. Gladwell
6	This act modifies the Utah Governmental Immunity Act. This act provides for actual or
7	mail delivery to provide notice of a legal claim against a government entity. This act
8	makes technical changes.
9	This act affects sections of Utah Code Annotated 1953 as follows:
10	AMENDS:
11	63-30-2, as last amended by Chapter 224, Laws of Utah 2000
12	63-30-11, as last amended by Chapter 157, Laws of Utah 2000
13	Be it enacted by the Legislature of the state of Utah:
14	Section 1. Section 63-30-2 is amended to read:
15	63-30-2. Definitions.
16	As used in this chapter:
17	(1) "Claim" means any claim or cause of action for money or damages against a
18	governmental entity or against an employee.
19	(2) "Direct and deliver" means:
20	(a) actual delivery of a notice of claim to the \$ OFFICE OF THE \$ person identified in
20a	Section 63-30-11 as
21	the proper recipient of the notice of claim; or
22	(b) mailing a notice of claim, \$ [by registered mail, return receipt requested]
22a	IN ACCORDANCE WITH SECTION 68-3-8.5 § , to the § OFFICE OF THE § person
23	identified in Section 63-30-11 as the proper recipient of the notice of claim.
24	[(2)] (3) (a) "Employee" includes a governmental entity's officers, employees, servants
25	trustees, commissioners, members of a governing body, members of a board, members of a
26	commission, or members of an advisory body, officers and employees in accordance with
27	Section 67-5b-104, student teachers holding a letter of authorization in accordance with

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28	Sections 53A-6-103 and 53A-6-104, educational aides, students engaged in providing services
29	to members of the public in the course of an approved medical, nursing, or other professional
30	health care clinical training program, volunteers, and tutors, but does not include an
31	independent contractor.
32	(b) "Employee" includes all of the positions identified in Subsection [(2)] (3)(a),
33	whether or not the individual holding that position receives compensation.
34	[(3)] (4) "Governmental entity" means the state and its political subdivisions as defined
35	in this chapter.
36	[(4)] (5) (a) "Governmental function" means any act, failure to act, operation, function,
37	or undertaking of a governmental entity whether or not the act, failure to act, operation,
38	function, or undertaking is characterized as governmental, proprietary, a core governmental
39	function, unique to government, undertaken in a dual capacity, essential to or not essential to a
40	government or governmental function, or could be performed by private enterprise or private
41	persons.
42	(b) A "governmental function" may be performed by any department, agency,
43	employee, agent, or officer of a governmental entity.
44	[(5)] (6) "Injury" means death, injury to a person, damage to or loss of property, or any
45	other injury that a person may suffer to his person, or estate, that would be actionable if
46	inflicted by a private person or his agent.
47	[(6)] (7) "Personal injury" means an injury of any kind other than property damage.
48	[(7)] (8) "Political subdivision" means any county, city, town, school district, public
49	transit district, redevelopment agency, special improvement or taxing district, or other
50	governmental subdivision or public corporation.
51	[(8)] (9) "Property damage" means injury to, or loss of, any right, title, estate, or
52	interest in real or personal property.
53	[(9)] (10) "State" means the state of Utah, and includes any office, department, agency,
54	authority, commission, board, institution, hospital, college, university, or other instrumentality
55	of the state.
56	Section 2. Section 63-30-11 is amended to read:
57	63-30-11. Claim for injury Notice Contents Service Legal disability
58	Appointment of guardian ad litem.

59 (1) A claim arises when the statute of limitations that would apply if the claim were 60 against a private person begins to run. (2) Any person having a claim for injury against a governmental entity, or against its 61 employee for an act or omission occurring during the performance of the employee's duties, 62 within the scope of employment, or under color of authority shall file a written notice of claim 63 64 with the entity before maintaining an action, regardless of whether or not the function giving 65 rise to the claim is characterized as governmental. 66 (3) (a) The notice of claim shall set forth: 67 (i) a brief statement of the facts; (ii) the nature of the claim asserted; and 68 69 (iii) the damages incurred by the claimant so far as they are known. 70 \$ [(b) Claimants shall:] 71 [+] (b) (i) The [+] [(i) ensure that the] s notice of claim S[+] shall be s[: (i)] S[is] s 71a signed by the person 72 making the claim or that person's agent, attorney, parent, or legal guardian \$ [; and] . \$ 73 (ii) **\$ THE CLAIMANT SHALL \$** [directed and delivered] direct and deliver the notice of claim to: 74 (A) the city or town recorder, when the claim is against an incorporated city or town; 75 (B) the county clerk, when the claim is against a county; 76 (C) the superintendent or business administrator of the board, when the claim is against 77 a school district or board of education; 78 (D) the **S** [president] CHAIR s or secretary of the board **S** OF TRUSTEES s , when the claim 78a is against a special district; 79 (E) the attorney general, when the claim is against the State of Utah; or 80 (F) a member of the governing board, the executive director, or executive secretary, 81 when the claim is against any other public board, commission, or body. 82 (4) (a) If the claimant is under the age of majority, or mentally incompetent and 83 without a legal guardian at the time the claim arises, the claimant may apply to the court to 84 extend the time for service of notice of claim. 85 (b) (i) After hearing and notice to the governmental entity, the court may extend the 86 time for service of notice of claim.

(ii) The court may not grant an extension that exceeds the applicable statute of limitations.

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89 (c) In determining whether or not to grant an extension, the court shall consider

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whether the delay in serving the notice of claim will substantially prejudice the governmental entity in maintaining its defense on the merits.

- (d) (i) If an injury that may reasonably be expected to result in a claim against a governmental entity is sustained by a potential claimant described in Subsection (4)(a), that government entity may file a request with the court for the appointment of a guardian ad litem for the potential claimant.
- (ii) If a guardian ad litem is appointed under this Subsection (4)(d), the time for filing a claim under Sections 63-30-12 and 63-30-13 begins when the order appointing the guardian is issued.

Legislative Review Note as of 2-12-03 12:28 PM

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A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel